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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,820	10/31/2003	Matthew Englehart	MWS-062	1288

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EXAMINER	
CHEN, QING	

ART UNIT	PAPER NUMBER
2191	

MAIL DATE	DELIVERY MODE
06/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/698,820	**Applicant(s)** ENGLEHART ET AL.	
	Examiner Qing Chen	**Art Unit** 2191	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-26*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

    _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

SPE 2191

Continuation of 3. NOTE: Applicant's arguments are not persuasive.
In the remarks, Applicant argues that:
Regarding claims 12-15, the Examiner alleged that "Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized" (office action, paragraph 10). Applicants respectfully disagree. Independent claim 12 recites a tangible electronic device including computer program components. Applicants contend that claim 12 adequately defines structural and functional interrelationships between the computer program components and the electronic device which permits the computer program components' functionality to be realized. As such, claim 12 recites statutory subject matter.

Examiner's response:
The Examiner disagrees with Applicant's assertion that Claim 12 recites statutory subject matter. The Examiner maintains that the 35 U.S.C. § 101 rejections of Claims 12-15 are consistent with the Office's current policies regarding non-statutory subject matter. The claims recite an electronic device, however, the recited components of the electronic device appears to lack the necessary physical components (hardware) to constitute a machine or manufacture under § 101. Therefore, the claims can be reasonably interpreted as electronic devices containing computer program modules—software per se. Therefore, the claims are directed to functional descriptive material per se, and hence non-statutory.

In the remarks, Applicant argues that:
Regarding claims 16-26, the Examiner alleged that "the limitation of "said [computer-readable] medium holding instructions" can be reasonably interpreted as the computer-readable medium carrying or transmitting electrical signals, since the instructions are not recorded on the computer-readable medium" (office action, paragraph 10). Applicants respectfully disagree. Independent claim 16 recites a computer-readable medium including software instructions. Applicants contend that claim 16 adequately defines structural and functional interrelationships between the software instructions and the computer-readable medium which permits the software instructions' functionality to be realized. As such, claim 16 recites statutory subject matter. See In re Beauregard, 53 F.3d 1583, 1583-84 (Fed. Cir. 1995).

Examiner's response:
The Examiner disagrees with Applicant's assertion that Claim 16 recites statutory subject matter. The Examiner maintains that the 35 U.S.C. § 101 rejections of Claims 16-26 are consistent with the Office's current policies regarding non-statutory subject matter. The claims recite a computer-readable medium holding instructions. Instructions must be stored on a computer-readable medium so as to permit the function of the descriptive material to be realized when executed by a computer. Instructions not stored on a compute-readable medium can be reasonably interpreted as the computer-readable medium carrying or transmitting electrical signals, since the instructions are not recorded on the computer-readable medium. Therefore, the claims are directed to non-statutory natural phenomena.

In the remarks, Applicant argues that:
It appears from the Examiner's remarks at paragraph 17 of the office action that the Examiner is pointing to the handler function dentitions and parameter definitions in Cheng as disclosing "a custom storage class," as required by claim 1. As recited in claim 1, a custom storage class specifies the manner in which an automatic code generator creates source code corresponding to data referenced by a graphical model. Additionally, as described in Applicants' Specification at page 2, lines 5-8, changes to the unique set of instructions defining a custom storage class collectively apply to the (potentially large) set of data of that class.

Cheng does not disclose a custom storage class as required by Applicants' claim 1, because the parameter definitions and handler function definitions in Cheng do not specify the manner in which an automatic code generator creates source code corresponding to data referenced by a graphical model. Cheng states: "Command structure generation engine 145 takes the information entered by the developer and generates the handler function definition file. The exemplary code above may include the following information: the type of command (e.g., can this command handle "No" forms), the bitmask of required parameters, the bitmask of optional parameters and the actual handler function associated with the definition" (Cheng, paragraph [0042]). As described in the above excerpt of Cheng, the parameter definitions and handler function definitions generated by the command structure generation engine correspond to parameter functions and handler functions, respectively. In contrast, claim 1 requires generation of source code corresponding to data referenced by a graphical model. Thus, Cheng fails to disclose a custom storage class as recited in claim 1 and as described in Applicants' Specification.

Applicants also respectfully submit that Cheng fails to disclose "custom storage class specifying the manner in which an automatic code generator creates source code corresponding to data referenced by said graphical model in said graphical modeling and execution environment," as recited in claim 1.

Examiner's response:
Examiner disagrees. Cheng et al. clearly disclose custom storage class specifying the manner in which an automatic code generator creates source code corresponding to data referenced by said graphical model in said graphical modeling and execution environment (see Figures 4 and 6; Paragraphs [0023] and [0043]). Attention is drawn to Figure 4 of Cheng et al., where the figure illustrates a command structure manifest containing command nodes (data referenced by said graphical model). Each command node has associated parameters and handler functions provided by a user using a GUI. The handler code generation engine automatically generates handler function code (creates source code corresponding to data referenced by said graphical model) using the parameter and handler function definitions (custom storage class). The handler function code is then executed by the operating system to carry out the particular command.

In the remarks, Applicant argues that:
It appears from the Examiner's remarks at paragraph 17 of the office action that the Examiner is pointing to handler function code generated via GUI 200 as disclosing "source code corresponding to data referenced by said graphical model," as required by claim 1.

Applicants respectfully disagree because Cheng does not disclose creation of source code corresponding to a graphical model. Graphical user interface (GUI) 200 in Cheng, pointed out by the Examiner, is not a graphical model. In Cheng, GUI 200 is used merely to present command structure manifest 110 to a developer (Cheng, paragraph [0023] and Figure 4). In contrast, the graphical model recited in claim 1 is described to be executable in Applicants' Specification at page 1, lines 24-27, and is not simply a GUI for the presentation of information. Cheng does not disclose that GUI 200 is a graphical model and thus GUI 200 in Cheng is not synonymous with a graphical model as required by claim 1.

Examiner's response:
Examiner has addressed Applicant's arguments in the Examiner's response above. Contrary to Applicant's assertion, the command structure manifest is interpreted as the "graphical model," not the GUI.

In response to Applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the features upon which Applicant relies (i.e., the graphical model being executable) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, upon reviewing the cited passage in the specification (page 1, lines 24-27), it appears that the plain language of the specification describes the software code produced by the automatic code generation process as being executable, not the graphical model as contended by the Applicant.